



Chapter 13 - Appeals, Adjustments & Variances

Purpose

The zoning and sign ordinances are intended for broad application across the myriad of properties and developments in the community. In limited circumstances, application of these ordinances may result in a situation in which: (1) The ordinance creates an unintended hardship or unequal application of the ordinance on a limited number of property owners; (2) If the ordinance were followed as literally written it would result in a situation that would be inconsistent with the spirit and intent of the ordinance; or (3) The ordinance does not speak directly to or is ambiguous with respect to a given situation.

As a result, there are several procedures for requesting relief from certain provisions of the zoning and sign ordinances. This chapter provides an overview of these procedures and generally describes the application requirements and decision making criteria. The details on how to obtain relief from a specific requirement vary significantly depending upon the extent of relief requested and the ordinance from which the relief is requested.

It is important to note appeals, adjustments, and variances are not granted simply because complying with a particular requirement is inconvenient or more expensive. There must be solid justification for why an ordinance requirement that is broadly applied should not be applied to a particular project.

Appeals

Appeals typically arise from situations where the application of the zoning or sign ordinance to a particular situation is ambiguous or undefined. The provisions of each ordinance provide for staff to issue an order, requirement, decision, determination, or interpretation pertaining to specific provisions of the ordinance. If an applicant believes the order, requirement, decision, determination, or interpretation is incorrect, an appeal can be filed with the Board of Zoning Appeals (BZA). Only a written order, requirement, decision, determination, or interpretation can be appealed.

When deciding appeals, the BZA presumes the written order, requirement, decision, determination, or interpretation is correct and places the burden of persuasion of error on the appellant. In exercising its powers, the BZA may reverse or affirm wholly or partly, or may modify the order, requirement, decision, determination, or interpretation, and to that end has the powers of the staff member from whom the appeal is taken, may attach appropriate conditions, and may issue or direct the issuance of a permit. After the public hearing, but not later than 40 days from the hearing date (unless the appellant consents to a longer time period), the BZA will make a decision on the appeal and report its findings. The BZA may obtain additional evidence in order to resolve the appeal and may remand the appeal to obtain such evidence. A written copy of the BZA decision and findings will be transmitted to the appellant by the MAPD.

Adjustments

Adjustments typically arise from situations where the application of the zoning ordinance or the provisions of a Planned Unit Development (PUD), Community Unit Plan (CUP), Protective Overlay (P-O), or Conditional Use (CU) would result in a situation inconsistent with the spirit and intent of the ordinance or PUD, CUP, P-O, or CU provision if it were followed as literally written. Adjustments typically involve minor changes to setback requirements, building height, building size, lot size, signage restrictions, parking requirements or screening requirements.

Adjustments can only be granted in certain limited circumstances and are approved administratively by the Planning Director with the concurrence of the Zoning Administrator, typically within 17 days from the date of application. Adjustment requests are reviewed in light of any adverse impacts on vehicular and pedestrian circulation in the area, any adverse impacts on surrounding uses, compatibility with surrounding uses, and public health, safety, and welfare. Adjustments may be subject to conditions of approval to prevent damage to adjacent properties and to safeguard public interests.

Applicants may appeal the decision rendered on an adjustment request if the applicant believes the decision was based on an erroneous application of the zoning ordinance. Applicants dissatisfied with the disapproval of an adjustment or the conditions of approval for an Adjustment may request a variance of the zoning ordinance or an amendment of the applicable PUD, CUP, P-O, of CU.

Variances

Variances typically arise from situations where the application of the zoning or sign ordinance creates an unintended hardship or unequal application of the ordinance on a limited number of property owners. Variances typically involve changes to setback requirements, building height, building size, lot size, signage restrictions, parking requirements, or screening requirements that are not minor in nature and, therefore, cannot be addressed by an adjustment.

Variance requests are reviewed by the BZA in light of five criteria specified by Kansas statutes intended to evaluate the uniqueness of the property, impact on adjacent property owners, hardship caused by the requirement, public safety and welfare, and intent of the requirement. In exercising its powers, the BZA may grant or deny a variance request and may attach appropriate conditions of approval. After the public hearing, but not later than 40 days from the hearing date (unless the applicant consents to a longer time period), the BZA will make a decision on the variance and report its findings. A written copy of the BZA decision and findings will be transmitted to the applicant by the MAPD.

Application Procedure

While the procedure for each application type described in this chapter varies, the general application procedure for all application types is similar and is described below. Specific requirements for each application type are described in detail in the application instructions. Therefore, application instructions also must be consulted in addition to this chapter.

Step 1 – Informal Counter Meeting

It is recommended that the applicant meet informally with an individual MAPD Current Plans staff member prior to submitting an application. The purpose of the informal counter meeting is to establish the basic facts regarding the property and the proposed request and insure the applicant is aware of the correct procedures to move the project forward. At the informal counter meeting, staff will provide the applicant with appropriate applications. It is not necessary to have detailed plans at the counter meeting. However, the more information the applicant has, the better able staff will be to provide better advice. Depending upon the outcome of the counter meeting, the applicant may be asked to attend a Development Review Committee (DRC) meeting.

Step 2 – Development Review Committee

DRC meetings are informal meetings that occur most every Friday afternoon beginning at 1:30 p.m. Applicants are scheduled at 30-minute increments. All departments likely to have any review responsibility for an application are represented at DRC (e.g. Planning, Engineering, Code Enforcement and Permit staff). These staff members can provide as complete as possible input regarding expected requirements and timetables for a given project. Staff cannot guarantee that all issues will be identified at the DRC meeting however comments received can be used by an applicant to evaluate a proposed project, and to get an initial response from staff.

Step 3 – Filing the Application

Applications can be obtained and filed with the MAPD located in City Hall, 455 Main Street, 10th Floor Wichita, Kansas, on any business day between 8:00 a.m. and 5:00 p.m. Application forms are also available on the City's website at www.wichita.gov. Applications can also be faxed to applicants by calling the MAPD. For appeals and variances, a calendar containing filing deadlines and hearing dates for the

Process Improvement Points

Staff may be able to provide an alternative means of resolving a situation besides an appeal, adjustment or variance if consulted early in the process.

Staff may be able to provide information to help you assess whether your request will be approved.

BZA is available from the MAPD office or City website. Applicants are encouraged to obtain a copy of the BZA calendar, and utilize the dates and deadlines as schedules are developed and development milestones are established. There are individual application forms for each application type. Each application type has its own specific instructions and fee schedule.

In general, a completed application consists of:

- Completed and signed (by the owner of the property or legally designated agent) application form
- Certified ownership list (except for adjustments)
- Site plan
- Justification letter
- Filing fee

The application form is mainly self-explanatory requiring the legal description of the property under consideration, an explanation of what is being requested and why. A title or Abstract company must create the state required certified ownership list. The ownership list must include the names and addresses of all property owners within a specified distance surrounding the perimeter of the application area. See individual application instructions for specific distance requirements. There is an instruction sheet available outlining minimum requirements for site plans. The applicant is required to post a notification sign on the application area. Applicants purchase a sign (currently \$3.00 per sign) in addition to the application fees or they can provide their own sign. One sign is required for each street frontage. Sign posting instructions are available at the time of application. Application fees are described in each instruction sheet. Application fees are non-refundable.

Step 4 – Staff Report

For Appeals and Variances, once a completed application is on file staff will develop a written staff report that contains staff's recommendation to the BZA. Staff will make every effort to work with the applicant to see that the report accurately reflects the applicant's intentions. When possible, staff will work with the applicant to develop compromise solutions if there are differences of opinions between staff and the applicant over any of staff's recommendations. The applicant can assist processing of the case by providing complete information regarding the reason for the application.

Process Improvement Points

Base the justification of your request on information pertinent to the City of Wichita and Sedgwick County. Justification based on other jurisdictions is less likely to get approved.

Generally the applicant will be provided a copy of the staff report six days prior to the BZA hearing.

Process Improvement Points

Step 5 – Public Hearing

Every Appeal and Variance application is reviewed by the BZA during a public hearing. The BZA consists of volunteer citizens appointed by the governing body per the provisions of Kansas statutes. The BZA generally meets the fourth Tuesday of the month at 1:30 p.m. for properties located within the City of Wichita and the first Tuesday of the month at 3:30 p.m. for unincorporated properties.

BZA hearings are generally held in the 10th floor conference room located in Wichita's City Hall, 455 Main Street,

Typical reviews begin with a staff report followed by a presentation by the applicant. Individuals not associated with the applicant are allowed to speak for or against the request. The applicant is then given rebuttal time to address comments made by individuals not associated with the application. If no one speaks other than the applicant, rebuttal time is not provided. The hearing is then closed by the BZA and comments are restricted to Board members. Board members discuss the merits of the case application and take an appropriate action.

Requests can only be approved by a majority of the qualified members appointed to the Board regardless of the number of Board members present. Failure of a request to receive a majority vote results in the request being denied.

WICHITA - SEDGWICK COUNTY APPEALS, ADJUSTMENTS, AND VARIANCES PROCESS

